



Proposed Regulation Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) citation	18 VAC 50-22
Regulation title	Board for Contractors Regulations
Action title	Amending Regulations to add/modify specialties.
Date this document prepared	February 9, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The Board for Contractors (the Board) seeks to amend its current regulations to reflect statutory changes and to respond to changes in the industry. These proposed regulations will add a new specialty to incorporate businesses that perform work related to the Certified Accessibility Mechanic program and amend the manufactured home specialty to comply with changes to the Code of Federal Regulations by HUD.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 54.1-1102 of the Code of Virginia provides the authority for the Board to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is up to the discretion of the Board, but shall not be in conflict with the purposes of the statutory authority.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

Recent statutory and policy changes made by federal and state agencies, that directly affect the regulant population of the Board, as well as changes in the industry, warrant review and promulgation of regulations to ensure that they accurately reflect these changes and the current requirements and standards, and that they are consistent and clear. Ensuring that the regulations are as clear as possible will facilitate the regulations’ compliance with the statutes and Board’s requirements, which will better protect the health, safety, and welfare of the public.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)

The new specialty Accessibility Services Contracting and a definition of the scope of practice for this specialty will be added to the current regulations. Also included is a separate specialty for contractors that perform work on Limited Use Limited Application (LULA) elevators.

The definition of Manufactured/Modular Building Contracting will be amended to add the provisions of the current HUD requirements.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

- 1) These changes are implemented to bring the current regulations into compliance with changes in statutes and regulations that have already been determined to be advantageous to the public. The failure of the Board for Contractors to bring its regulations into compliance with these changes could result in potential damage to businesses and individuals.
- 2) Failure to bring the manufactured housing contractors into conformity with current HUD requirements would place the Commonwealth out of compliance, which could result in action being taken by HUD. It would be advantageous to comply with the federal requirements.
- 3) There are no other pertinent matters of interest to the regulated community, government officials, and the public.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements in the proposed regulations that would be more restrictive than those currently required in Federal Law.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities will be particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting,

recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Eric Olson, Executive Director, c/o DPOR, 9960 Mayland Drive Ste 400, Richmond, Virginia, 23233. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

Public hearings will be held and notice of those public hearings will appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements create the anticipated economic impact.

**Board for Contractors
Fiscal Impact of Proposed Regulation**

Summary:

The Board is amending the regulations to revise the definitions of the contractor specialties of Manufactured Home Contracting and Industrial Building Contracting. The proposed amendments also add definitions for the Accessibility Services Contracting and Accessibility Services Contracting – LULA specialties..

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The board has no other source of income.

Fiscal Impact:

	FY 2011	FY 2012	FY2013	FY2014
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
One-Time Costs	0	0	0	0
Ongoing Costs	0	0	0	0
Total Fiscal Impact	0	0	0	0
FTE	0.00	0.00	0.00	0.00

Description of Costs:

One-Time: No one-time costs are expected as a result of this regulatory change.

Ongoing: No ongoing costs are expected as a result of this regulatory change.

Cost to Localities: No change anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: The revised regulations apply to elevator/escalator contractors and modular/manufactured building contractors.

Estimated Number of Regulators: There are currently approximately 117 licensed elevator/escalator contractors and 958 licensed modular/manufactured building contractors.

Projected Cost to Regulators: There is no anticipated additional cost to the regulators.

Board for Contractors

Financial Status and Projections Current Regulations

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulants</u>	
2008-10	2,419,086	14,503,793	15,957,903	964,976	6.0%	95,407	as of
2010-12	964,976	20,219,109	19,653,858	1,530,227	7.8%		6/30/2010
2012-14	1,530,227	20,843,853	20,876,800	1,497,280	7.2%		
2014-16	1,497,280	20,843,853	21,664,490	676,643	3.1%		

Fee History \$

<u>Major Fee Type</u>	<u>2007</u>	<u>2010</u>
Individual Application	90	130
Individual Renewal	40	90
Class A Contractor Application	200	360
Class A Contractor Renewal	165	240

Board for Contractors

Financial Status and Projections Proposed Regulations

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulants</u>	
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Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

In reviewing the regulations, the Board considered whether there was a less burdensome alternative. Alternatives that failed to meet this consideration were rejected. The Board believes that failure to adopt these regulations will actually place an unnecessary burden on both the existing regulant population and future applicants for licensure.

Most of the proposed amendments to the regulations clarify existing language; modify definitions to meet changes in the industry or to address issues brought before the Board since the last amendments were promulgated. For those changes that are more substantive the Board looked at methods used in other regulatory programs as well as those used by similar agencies in other states. The Board weighed those alternatives against the burden to its own regulant population, especially small businesses.

The Board will consider all comments received during the public comment period as to proposed alternatives.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

- 1) These proposed regulations establish compliance or reporting requirements equal to or less stringent than those already in place.
- 2) There are no deadlines or reporting requirements required by these proposed regulations.
- 3) There are no reporting requirements proposed by these regulations.
- 4) There are no performance standards proposed by these regulations.
- 5) Unlike contractor licenses that are issued business entities, these licenses and certifications are issued to individuals. The effect on small businesses resulting from the promulgation of these regulations would be negligible.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

No comments were received during the public comment period.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These proposed regulations would have no impact on the institution of the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences
18 VAC 50-22-30	N/A	Definitions	Adds “Accessibility Services Contracting” (Abbr: ASC) to the definition of specialty services. This specialty is being added in order to bring the regulations that govern contractors into line with the creation of the Certified Accessibility Mechanic program chapters 81 and 207 of the 2010 Acts of the General Assembly. Currently, contractors performing work on accessibility devices are required to hold a license with the Elevator/Escalator specialty. Certified Accessibility Mechanics were added to the law in order to give those individuals who perform work on such devices a more limited scope of certification. This newly created specialty will accommodate businesses that

			<p>employ these newly certified individuals and will allow them to continue to work without the burden of qualifying for the Elevator/Escalator specialty.</p> <p>Adds “Accessibility Services Contracting – LULA” (Abbr: ASL) to the definition of specialty services. The addition of this specialty allows a company that works on Limited Use/Limited Application (LULA) elevators to perform such work. The statute that created the Certified Accessibility Mechanic Program (§ 54.1-1140 et seq of the Code of Virginia) separates those that work on LULA devices in addition to the other equipment associated with accessibility. definitions are being added to allow those engaged in residential elevator installation to hold a license with similar yet different requirements than a “Certified Elevator Mechanic.” Additionally, the Limited Use, Limited Applicability (LULA) endorsement is being added to distinguish further amongst residential elevator installers and permits those to install LULAs.</p> <p>"Industrialized building contracting" (Abbr: IBC) to the definition of specialty services. Currently, contractors installing industrial buildings, also called modular, are licensed under the Manufactured/Modular building contracting specialty. The implementation by the Department of Housing and Community Development of new HUD standards for those who install manufactured homes necessitates the breakout of modular contractors. The new HUD regulations would add requirements to the current licensing scheme that would be overly burdensome and unnecessary for those currently only installing modular structures. The breakout of the specialty will allow these contractors to continue to install modular buildings without having to meet these new requirements.</p> <p>"Manufactured home contracting" (Abbr: MHC) to the definition of specialty</p>
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			<p>services. Currently, contractors installing manufactured homes are licensed under the Manufactured/Modular building contracting specialty. The implementation by the Department of Housing and Community Development of new HUD standards for those who install manufactured homes necessitates the breakout of manufactured home contractors into their own specialty. This will allow the Board for Contractors and the Department of Housing and Community Development to ensure compliance with the new HUD requirements by isolating the specialty and not allowing any other specialty to perform the work.</p> <p>The definition of “Modular/manufactured building contracting” is deleted from the regulations. This amendment is made as the specialties have been broken out individually and the current definition is no longer necessary or valid.</p>
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